
No. 95-3486

David Thrasher,
 Appellant,
 v.
State of Missouri,
 Appellee.

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* Appeal from the United States
* District Court for the
* Eastern District of Missouri.
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* [UNPUBLISHED]
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Submitted: November 26, 1996

Filed: December 12, 1996

Before BEAM, HANSEN, and MORRIS SHEPPARD ARNOLD, Circuit Judges.

PER CURIAM.

David Thrasher, a Missouri inmate, appeals from the district court's¹ denial of his 28 U.S.C. § 2254 petition as procedurally barred. Thrasher argues the district court erred by denying his petition without an evidentiary hearing and by failing to appoint counsel sua sponte.

Thrasher has not alleged cause and prejudice or actual innocence to excuse his default. See Coleman v. Thompson, 501 U.S. 722, 750 (1991). His general allegations of ineffective assistance of counsel do not constitute cause as they are not the same as the

¹The Honorable Edward L. Filippine, United States District Judge for the Eastern District of Missouri, adopting the report and recommendations of the Honorable Frederick R. Buckles, United States Magistrate Judge for the Eastern District of Missouri.

allegations of ineffectiveness he raised in state postconviction proceedings. See McKinnon v. Lockhart, 921 F.2d 830, 832 (8th Cir. 1990) (per curiam) (claim of ineffective assistance of appellate counsel may be used to establish cause for procedural default only if first presented to state courts as independent Sixth Amendment claim), cert. denied, 501 U.S. 1208 (1991). Therefore, Thrasher was not entitled to an evidentiary hearing. See Wilson v. Kemna, 12 F.3d 145, 146 (8th Cir. 1994) (no entitlement to evidentiary hearing in habeas proceeding where record clearly indicates petitioner's claims are procedurally barred). We conclude the district court did not abuse its discretion by not appointing counsel sua sponte. See Smith v. Goose, 998 F.2d 1439, 1442 (8th Cir. 1993).

Accordingly, the judgment of the district court is affirmed.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.